

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.182 OF 2007

1. Hiralal Jairam Thacker, Mumbai;
2. Dr.Premji Valji Thacker, Mumbai;
3. Madhukar Virji Thacker, Mumbai;
4. Maganlal Jivram Thacker, Mumbai;
5. Chandulal Dayalji Thacker, Mumbai      Appellants

## VERSUS

1. Kulin Hiralal Thacker, Mumbai;
2. Vasantbhai Jivram Thacker, Kolkata;
3. Bharat Shivajibhai Sethia, Kolkatta,
4. Mahendra Bhawanji Thacker, Nagpur;
5. Vasudev Thacker, Bhuj;
6. Charity Commissioner, M.S; Mumbai.

Mr.Pravin Samdani with Mrs.Maya i/by M/s.Madhukar  
Munim & Co. for appellants.

Mr.Jyotsna N. Pandhi for respondents 2 to 5.

Mrs.G.P.Mulekar, AGP for respondent no.6.

CORAM : A.S.OKA, J.

DATE OF RESERVING THE JUDGEMENT : 06.03.2007  
DATE OF PRONOUNCING THE JUDGEMENT : 22.03.2007

**JUDGEMENT :-**

1. Admit. The advocate for the Respondent nos.2 to 5 waives service. The learned Assistant Government Pleader waives service for the sixth respondent. The name of the first respondent is already deleted. By consent of the advocates appearing for the parties the appeal is forthwith taken up for final disposal.

2. The appellants are the trustees of a trust known as "Shri Lalji Ratasnhi, Meghji Manji Gopalji Vishram, Meghji Moraraji and Purushotam Kanji, Shri Bhuj Lohana Boarding (hereinafter referred to as "the said Trust"). The said trust was established by a Deed of Trust dated 10th October 1923. An application was made by the petitioners before the Deputy Charity Commissioner, Mumbai by invoking the provisions of Section 50A(1) of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the said Act of 1950"). The prayer made in the said application was for framing a scheme for management and administration of the said trust. The said application was rejected by the learned Deputy Charity Commissioner by judgement and order dated 25th November 2005. The learned Deputy Charity Commissioner was of the view that the Deed of Trust dated 10th October 1923 was a

comprehensive deed for proper and effective management of the trust activities. The learned Deputy Charity Commissioner referred to the rules framed as regards Lohana Boarding School, at Bhuj. He noted that founding and maintaining a Boarding School and Hostel for poor and deserving students of Lohana community at Bhuj is the prime object of the trust. He pointed out that now the objects of the trust is sought to be changed by providing for setting up of a vocational training institute and to carry on additional activities as a charitable object. The learned Deputy Charity Commissioner held that it is not established that it was desirable for proper management of the trust to frame a scheme. He observed that if the appellants want to introduce new object of establishing an institution of vocational training at Bhuj, they can seek permission for introducing the new object in the original Trust Deed and only for that purpose framing of a new scheme was not warranted. He observed that the resolution for framing a scheme is not passed unanimously by the trustees.

3. An application under the said Act of 1950 was filed before the City Civil Court, Mumbai for challenging the order passed by the Deputy

Charity Commissioner. The said application has been rejected by the judgement and order impugned in this appeal. The learned Judge of the City Civil Court confirmed the findings recorded by the learned Deputy Charity Commissioner by holding that the settlement of new scheme was totally unwarranted.

4. The learned counsel appearing for the appellants submitted that there was no opposition to the resolution for framing a scheme by any of the trustees and in fact some of the trustees who are not applicants in the said application for framing the scheme, were impleaded as proforma respondents in the application before the Deputy Charity Commissioner and none of the said respondents have objected to the framing of the scheme. He invited my attention to the relevant clauses in the old scheme and the clauses in the draft scheme submitted by the appellants before the Deputy Charity Commissioner. He submitted that the trustees desire that more and more deserving students should get the benefit of the benevolent activities of the trust.

5. The learned AGP appearing for the sixth respondent has opposed the appeal by pointing out

that the Deed of Trust makes comprehensive provisions for day to day management of the trust. She placed reliance on a decision of learned Single Judge of this Court in the case of Shri Mallikarjun Basvanappa Masute & another Vs. Shri Dattatraya Krushnath Wadane & others reported in 2005(4)-All MR-296. By placing reliance on the said decision, she submitted that the exercise of power of framing a new scheme should be limited to very exceptional circumstances and only on arriving at a conclusion that the existing scheme has proved to be inadequate to safeguard the interests of public trust and cannot operate in the interest of the public trust. She submitted that there is no material difference between the Deed of Trust and the draft of the scheme submitted by the appellants. She submitted that no fault can be found with the impugned judgements and orders. The learned advocate appearing for rest of the respondents has supported the appellants.

6. I have carefully considered the submissions. The substantial question of law which arises for consideration is "whether the impugned Judgements and Orders are perverse inasmuch as there was no legal ground to reject the prayer for framing a

scheme?" As held by a Division Bench of this Court, this appeal will lie only on a substantial question of law. It is undisputed that a power is vesting in the Deputy Charity Commissioner or the Assistant Charity Commissioner to frame a new scheme of management and administration of a public trust. The submission of the learned AGP is that since no substantial variation was sought to be made by the draft scheme, it is not necessary to frame the scheme. She submitted that both the Courts below were right in holding that it is for the appellants to take out appropriate proceedings for modification of the objects of the trust. Reliance is strongly placed on the decision of the learned Single Judge in the case of Mallikarjun (supra). The submission is that the power u/s 50A can be exercised in exceptional cases. The learned Single Judge has considered the scope of the power u/s 50A(1). The learned Single Judge has held that the Charity Commissioner has to be very slow in framing the scheme.

7. It must be noted here that merely because a comprehensive deed of trust is in existence, it cannot be said that the Charity Commissioner is divested of the power to frame the scheme. If

the Charity Commissioner has reason to believe that in the interest of proper management and administration of a public trust a scheme should be settled for it and it is necessary and expedient to frame a scheme, the power under the section can be exercised. In the present case, the trust has been created under an indenture of trust dated 10th October 1923. Thus, the trust and its rules were brought into existence nearly 83 years ago. A copy of the deed of trust is placed on record. In the year 2002 i.e. nearly 79 years from the date of execution of the said deed, an application for framing a scheme was made. The draft scheme provides for rules (total 31 in number). It must be noted here that the rules which are contained in the deed of trust were framed nearly 83 years back. In the original deed of trust it is provided that the trustees amongst themselves appoint three in number who shall be called as the managing trustees. In Schedule-C to the deed, the rules and regulations relating to the management and conduct of the said Lalji Ratasnhi, Meghji Majji Lohana Boarding School, at Bhuj have been incorporated. There are large number of amendments suggested to the rules contained in the indenture of these. One of the main change

appears to be expansion of the objects of the trust. In the deed it is provided that the members of the Managing Committee including trustees shall not be less than 15 and more than 25. The draft scheme provides that there shall be maximum eleven trustees and minimum seven trustees. It cannot be ignored that the draft scheme was submitted 79 years after the original rules were brought in existence along with the deed of trust. In the fast changing scenario it has to be ensured that the trust is managed properly and maximum benefits are extended to maximum number of beneficiaries. Long passage of time is certainly a very important consideration for exercising the power of framing the scheme. In a given case like present one, the long passage of time is itself an exceptional circumstance. The trustees desire not only to expand the objects of the trust but they want to have a modern scheme under which the trust can be properly administered for years to come. As stated earlier, there is no opposition now from any one to the proposal moved by the appellant trustees. In fact, the remaining trustees were parties before the Deputy Charity Commissioner and they have not chosen to raise any objection to the scheme.

8. In my view, the Courts below have taken a very hypertechnical view of the matter and have driven the appellants to a new litigation for getting the objects of the trust amended by making a fresh application before the Deputy Charity Commissioner. There was no legal or factual ground available to reject the application. Considering the clauses in the earlier rules of the year 1923 and considering the contents of the draft scheme, in my view, it is in the interest of proper management and administration of the trust, that a scheme should be settled. A grievance was sought to be made by the learned AGP by contending that the schedule of the property mentioned in the draft scheme does not match with the the schedule of the property mentioned in the register maintained in the office of the Charity Commissioner. Later on, after verifying the record she made a statement that there is no difference between the description of the property entered in the register maintained in the office of the Charity Commissioner and the property described in the draft scheme.

9. Considering the long lapse of time from the

date on which the earlier rules were framed, this is one of the exceptional case where power to frame the scheme has to be exercised. Hence, the appeal must succeed and I pass the following order.

10. ORDER :-

(a) The impugned judgements and orders passed by the Deputy Charity Commissioner and the City Civil Court, Mumbai are set aside;

(b) Application No.Dy-CC/45/02 made by the appellants is allowed;

(c) Accordingly, the scheme submitted by the appellants will now replace the original scheme provided by the Deed of Trust;

(d) There will be no order as to costs;

(e) The Appeal is allowed in above terms.

(A.S.OKA, J.)